

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

DEC. 17, 98

Hearing:  
April 9, 1998

Paper No. 11  
PTH

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Mitchell E. Peck

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Serial No. 74/716,067

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Auzville Jackson, Jr. for Mitchell E. Peck.

Darlene Bullock, Trademark Examining Attorney, Law Office  
101 (R. Ellsworth Williams, Managing Attorney).

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Before Simms, Cissel and Hairston, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Mitchell E. Peck has filed an application to register  
MEXICAN WATER for bottled drinking water.<sup>1</sup> Registration has  
been finally refused pursuant to Section 2(e)(3) of the  
Trademark Act, 15 U.S.C. 1052(e)(3), on the ground that  
applicant's mark is primarily geographically deceptively  
misdescriptive of these goods.

Applicant and the Examining Attorney have submitted briefs and an oral hearing was held before this Board.

In order to establish that a mark is primarily geographically deceptively misdescriptive, the Examining Attorney must show that the mark consists of or incorporates a term that denotes a geographical location which is neither obscure or remote, that there is a goods/place association between the goods on which the mark is (or will be) used and the geographical place named by the term, and that the goods do not, in fact, originate in that geographical place. See *In re Jacques Bernier Inc.*, 894 F.2d 389, 13 USPQ2d 1725 (Fed. Cir. 1990) and *In re Loew's Theaters, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985).

In this case, applicant has admitted that its bottled drinking water will originate in the United States. Also, there is no question that Mexico is a well-known geographical place. Further, the Examining Attorney submitted an excerpt from Webster's II New Riverside University Dictionary (1984) wherein "Mexican" is defined as: "Of or relating to Mexico or to its inhabitants, their language, or their culture." The question then is whether

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<sup>1</sup> Application Serial No. 74/716,067, filed July 18, 1995, alleging a bona fide intention to use the mark in commerce.

there is a goods/place association between bottled drinking water and Mexico, that is, whether the public would be likely to believe that bottled drinking water originates in Mexico. In support of her position that there is a goods/place association, the Examining Attorney submitted excerpts of stories from the NEXIS data base which demonstrate that bottled water is produced in Mexico.

Examples are set forth below:

Did you hear the one about the Mexican bottled water? It's bottled water from Mexico. Get it? Bottled Mexican water. Sorry, senor, there is no punchline. Instead, there is Penafiel, a line of packaged hydros from South of the Border that makes perfect sense to Mexican expatriates living in the US. It might also provide liquid refreshment to other Americans. (Beverage World, November 30, 1995);

. . . 70 percent of GEMEX's sales now come from Pepsi brands and the bottler's Electropura processed water and Garci Crespo mineral water make it Mexico's leading bottled water producer. (The Reuter Business Report, July 27, 1995);

Bonafont, which holds a 25 percent share of the nonreturnable section of Mexico's growing bottled water market, has seen sales increase 10 percent this year compared with the first half of 1995. (Plastics News, July 15, 1996); and

The proceeds will fund an acquisition of a facility in Mexico which will produce bottled water and juice. (Private Placement Reporter, July 29, 1996).

In view of the foregoing, we find that the Examining Attorney has established a prima facie case that the public would make a goods/place association, that is, that the public would be likely to believe that bottled drinking water sold under the asserted mark MEXICAN WATER does originate in Mexico. Competitors located in Mexico who produce bottled drinking water which originates in Mexico should be free to label their goods as "Mexican water."

Applicant maintains that purchasers will not be misled as to the origin of its bottled drinking water because the labels used thereon will bear a statement that the water originates in the United States. Also, applicant contends that:

It is well known that in some foreign countries, including many parts of Mexico, to drink untreated water creates the risk of intestinal upsets and other maladies. One popular expression refers to this as Montezuma's Revenge which applies to the general problems of unsafe drinking water whether in the area Montezuma reigned as Emperor or other areas.

Thus, no reasonable person in the United States would associate MEXICAN WATER as bottled drinking water originating in Mexico and would not buy it for that reason.

(Brief, p. 3).

We recognize that many people in the United States are aware that drinking the tap water in many foreign

countries, including Mexico, may be ill-advised. However, this does not mean that unpolluted or purified water does not exist in these countries, including Mexico.

Finally, applicant's contention that purchasers will not be misled as to the origin of the goods because the labels used thereon will bear a statement that the water originates in the United States is not persuasive. Explanatory statements on labels which purchasers may or may not note may not be used to negate misdescriptiveness. See *In re Budge Manufacturing Co., Inc.*, 857 F.2d 773, 8 USPQ2d 1259, 1261 (Fed. Cir. 1988).

In sum, we find that purchasers and prospective purchasers encountering the asserted mark MEXICAN WATER for bottled drinking water are likely to believe, mistakenly as it turns out, that the goods have their origin in Mexico.

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**Decision:** The refusal to register is affirmed.

R. L. Simms

R. F. Cissel

P. T. Hairston  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board

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